

Notice of Allowability

Application No.

10/091,024

Examiner

Brian J. Davis

Applicant(s)

HOUSER ET AL.

Art Unit

1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to applicant's amendment (3/27/06).
2. ☒ The allowed claim(s) is/are 1,7,13 [renumbered 1-3].
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☒ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date attached.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Steven T. Hunnius on 4/5/06.

The application has been amended as follows:

In claims 1 and 7, the phrase "L and M are independently selected pendant groups of the polymer backbone and" has been deleted.

In claims 1 and 7, both instances of "C₃H₅" have been deleted and replaced by -- C₃H₄ --.

In claims 1 and 7, the phrase "X and Y are independently selected halogen substituted alcohol or phenol groups and" has been deleted.

In claims 1 and 7, the phrase -- and n is at least 3 -- has been inserted at the end of the claim.

Claims 3-6 and 9-12 have been canceled.

Clarification

During the 3/16/06 interview to which applicant refers in the Remarks section of the Amendment, no substantive matters were discussed. Applicant called simply for clarification of a portion of the outstanding Office Action.

Oath/Declaration

The objection to the oath/declaration, outlined in the previous Office Action, is maintained for reasons of record. Applicant's arguments have been carefully considered, but are not persuasive. The examiner respectfully maintains that applicant has misinterpreted the pertinent cited section of the MPEP. An uninitialed line-through to a typed oath/declaration is never an acceptable change to the document. Applicant's argument that the change was made prior to the signing is both spurious and without proof. 37 CFR 1.52(c) states that the *alterations* [emphasis added] should be dated and initialed or signed. This is in addition to the normally required signature appearing elsewhere on the document. This signature itself cannot encompass approval of or acquiescence to the alterations to the document.

112 Rejections Withdrawn

The rejection of claims 1-13 under 35 USC 112, second paragraph, outlined in the previous Office Action, has been overcome by applicant's amendment. With respect to claims 1, 6, 7 and 11, the amendment clarifies the claim text as appropriate.

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The amendment cancels claims 2 and 8. With respect to the remaining claims, the rejection is moot.

Double Patenting Rejections Withdrawn

The rejection of claims 1-13 under 35 USC 101 over US 6,660,230 B2, outlined in the previous Office Action, has been overcome by applicant's amendment. The amendment cancels claims 2 and 8. The amendment narrows the independent claims such that they no longer read on the cited art.

The rejection of at least claim 1 under the judicially created doctrine of obviousness-type double patenting over US 6,617,040, outlined in the previous Office Action, has been overcome by applicant's submission of an acceptable Terminal Disclaimer.

Allowable Subject Matter

Claims 1, 7 and 13 are allowed. The following is an examiner's statement of reasons for allowance:

The closest prior art appears to be *Journal of Organometallic Chemistry* (1975) 84(2), p. 199-229 (CAPLUS abstract), which teaches compounds structurally related to those of the instant invention. The cited prior art neither teaches nor suggests the instant compounds, however. Nor would it have been obvious to one of ordinary skill in the art at the time of invention to modify the compounds of the prior art in order to arrive at those of the instant invention. There is no motivation to do so.

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Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian J. Davis whose telephone number is 571-272-0638. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 **BRIAN DAVIS
PRIMARY EXAMINER**

Brian J. Davis
April 5, 2006